85-330

No. _____

Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1984

In the Matter of
GLENWOOD T.V., INC., a Corporation,
Appellant,
vs.
BRUCE C. RATNER, as Commissioner
of Consumer Affairs
of the City of New York,
Appellee.

In the Matter of
CHARLES T.V., INC., a Corporation,
Appellant,
vs.
BRUCE C. RATNER, as Commissioner
of Consumer Affairs
of the City of New York,
Appellee.

BEST AVAILABLE COPY

ON APPEAL FROM THE COURT OF APPEALS
OF THE STATE OF NEW YORK

MOTION TO DISMISS OR AFFIRM

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EDITOR'S NOTE

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Preliminary Statement

Pursuant to Rule 16.1 of the Rules of this Court, the appellee moves that the appeal be dismissed, or in the alternative that the judgment of the Court of Appeals be affirmed.

Statement of the Case

In 1973, the New York City Council responded to a pattern of deceptive and unconscionable trade practices by radio and television service dealers by enacting an ordinance which requires dealers in the City to be licensed and to make full and fair disclosures to their customers. Licensees must, among other

things, prepare written estimates in advance of the costs of the work they propose to do, obtain signed orders for any work, and give their customers itemized final bills. Licensees are required to keep records reflecting their compliance with these mandates, which records must be "open and available for reasonable inspection by the Commissioner [of Consumer Affairs] or other law enforcement officials." New York City Administrative Code, ch. 32, tit. B, art. 44, Sec. B32 - 472.0(5).

The Council has also directed the Commissioner of Consumer Affairs to conduct periodic inspections to insure that licensees comply with the terms of their licenses and government regulations. New York City Administrative Code Sec. 773-13.0. Pursuant to this direction, the Commmissioner conducts spot checks of

each licensee about once a year. The scope of the inspections is limited to verifying that a dealer's license and other required notices are conspicuously posted in the public areas of their shops, and to examining a sample of the records which they are required to keep.

The Commissioner chooses the dealers to be inspected on any given day randomly by computer, and then designates the inspector to make the inspection. No inspector has discretion as to which dealer to inspect, and a standard form is used to insure that inspections are conducted in a uniform manner. Dealers are not notified in advance of when they will be inspected. The inspections ordinarily take 15-30 minutes to complete, but sometimes longer because inspectors will interrupt inspections to allow dealers to wait on customers. No

inspector is authorized to enter any part of a dealer's premises which is not open to the general public without the consent of the proprietor, and no search is made of the premises to locate any records. Dealers are simply asked to produce the records they are required to keep at the time of the inspection.

In 1979, the Department attempted spot checks of the two appellants. In both instances, the inspector checked to see that the dealer's license and other notices were conspicuously posted (they were), and then asked to see a sample of the estimates, work orders, and final bills they were required to keep. In both instances, the inspector's request was refused.

Administrative charges were filed against both appellees, and, following a hearing both were found guilty of

of willfully and unreasonably refusing to produce the requested records. Each licensee was fined $300 and ordered to make the records available for inspectors within five days of receiving notice of the hearing officer's decision. When they failed to comply, they were informed that their licenses would be suspended. When they further refused to surrender their licenses and cease operation pursuant to the notice of suspension, the Department revoked their licenses.

Appellees then commenced proceedings in the Supreme Court of the State of New York to review the administrative determinations, claiming, among other things, that the local legislation authorizing the inspections violated their Fourth Amendment rights.

Summary of Argument

This appeal does not present a substantial federal question. The issue is not, as appellants assert, whether the Commissioner of Consumer Affairs can lawfully conduct warrantless, non-consensual inspections of the commercial premises and property of licensed radio and television service dealers, but rather whether he can require dealers to produce for an inspector making a spot check certain business records the dealers are required by law to keep and make available for inspection. Statutory schemes that require businesses to keep records and file them periodically with regulatory agencies are commonplace and have long been viewed as constitutional. So too, is the statutory scheme at issue here. The statute does not become

constitutionally infirm because it permits the dealers to retain, rather than file, the records they are required to keep and display them to inspectors. The Commissioner in no way infringed the appellants' rights by penalyzing them for willfully refusing a request that they produce the records for a reasonable inspection.

Moreover, in upholding the constitutionality of the local legislation which authorized the inspections which appellants challenge, the New York Court of Appeals fully considered and applied the principles of Fourth Amendment jurisprudence found in this Court's numerous decisions. See Glenwood T.V., Inc. v. Ratner, 65 N.Y.2d 642, __ N.Y.S.2d __, ___ N.E.2d __ (1985), aff'g 103 A.D.2d 322, 480 N.Y.S.2d 98 (2d Dept. 1984). It upheld the legislation for the reasons

elaborated in the lengthy majority opinion of the Appellate Division (Titone, J.). That court stressed, as has this Court, that "analysis of any search and seizure claim, and correspondingly the Fourth Amendment's warrant clause, must begin with a threshhold determination of whether the subject of the search possess a reasonable expectation of privacy in the area or items searched" (13a). It found that the licensees could have no complaint about the presence of the inspectors in their shops because they have no reasonable expectation of privacy in the public areas of a commercial establishment, and that the warrant clause has long been deemed inapplicable to the records that businessmen are required by law to keep in compliance with regulatory require-ments. "In short, statutory schemes

requiring licensees to have books and records available during reasonable business hours are quite common . . . and have long passed constitutional muster...." (15a).

Moreover, the Appellate Division found that the authority to inspect the records is essentially an analogue of the power conferred upon an agency to issue a subpoena duces tecum, and satisfied the Fourth Amendment requirements applicable to such subpoenas. It ruled that the legislation by limiting the discretion of the inspectors in the field, and by limiting the scope of the inspections to required records and the licensees' public areas, was sufficient to protect the licensees' legitimate privacy interests, and stressed that judicial review is available ultimately before a

person can be required to submit to an inspection. "In fact, the administrative procedures under review provide more protection than a traditional search warrant, which is issued ex parte and is executed under the compulsion of the threat of force." (17a).

Argument

I. Introduction

It is well settled that the Fourth Amendment protects people, not places, Terry v. Ohio, 392 U.S. 1, 9 (1968); Katz v. United States, 389 U.S. 347, 351 (1967), and the purpose of the Fourth Amendment is to protect people from arbitrary and oppressive governmental conduct. Michigan v. Tyler, 436 U.S. 499, 504 (1978); United States v. Chadwick, 433 U.S. 1, 7 (1977). Thus, the Fourth Amendment vests individuals

with the right to be free from "unreasonable governmental intrusions into their legitimate expectations of privacy." Chadwick, 433 U.S. at 7; see also Bell v. Wolfish, 441 U.S. 520, 558 (1979); Terry, 392 U.S. at 9.

The Fourth Amendment prohibits only unreasonable searches, Carroll v. United States, 267 U.S. 132, 147 (1925). To determine reasonableness, the Court balances the intrusiveness of the search on the individual's Fourth Amendment interests against its promotion of legitimate governmental interests. Illinois v. Lafayette, 103 S. Ct. 2605, 2608 (1983); United States v. Villamonte-Marquez, 103 S. Ct. 2573, 2579 (1983); Delaware v. Prouse, 440 U.S. 648, 654 (1979); see also United States v. Martinez-Fuerte, 428 U.S. 543, 555 (1976); Terry, 392 U.S. at 20-21.

In the present case, the City Council has determined that certain records must be kept by licensed radio and television service dealers reflecting their compliance with their obligations as licensees to make full and fair disclosures to consumers, and that these records be "open and available for reasonable inspection" in order to permit effective enforcement of the law. See United States v. Biswell, 406 U.S. 311, 316 (1972) ("unannounced, even frequent inspections" of businesses may be essential "if inspection is to be effective and serve as a credible deterrent"). Appellants for their part have no Fourth Amendment interest at stake in the records and no other legitimate interest to put into the balance, which is not adequately protected by the statute itself and by

the availability of judicial review to protect against mistaken or arbitrary inspection orders. Thus, as we will show below, the inspections at issue satisfy the Fourth Amendment's central requirement of reasonableness. Donovan v. Dewey, 452 U.S. 594, 600, 603, 605 (1981).

II. The Appellants Have No Legitimate Expectation of Privacy In Business Records That They Are Required By Law to Maintain and Make Available to City Inspectors

The application of the Fourth Amendment depends in the first instance on whether the person invoking its protection can establish a legitimate expectation of privacy in the area or items the government would search. Rakas v. Illinois, 439 U.S. 128, 143 (1978); Terry v. Ohio, 392 U.S. 1, 9 (1968); Katz v. United States, 389 U.S. 347, 351

(1967). In Donovan v. Dewey, 452 U.S. 594 (1981), the Court stated (at 598-500):

> "unlike searches of private homes, which specifically must be conducted pursuant to a warrant in order to be reasonable under the Fourth Amendment, legislative schemes authorizing warrantless administrative searches of commercial property do not necessarily violate the Fourth Amendment . . . . The greater latitude to conduct warrantless inspections of commercial property reflects the fact that the expectation of privacy that the owner of commercial property enjoys in such property differs significantly from the sanctity accorded an individual's home."

Accordingly, it is critical to decide what, if any, legitimate expectation of privacy the appellants have in the records the Commissioner sought to inspect. These records comprise copies of written estimates, work orders, and final bills provided by service dealers to their customers. There is nothing intrinsically private about them. The

information they contain does not "touch upon the intimate areas of an individual's personal affairs" or reveal anything about a dealer's "activities, associations, or beliefs." California Bankers Ass'n. v. Schultz, 416 U.S. 21, 78-79 (1974) (Powell, J., concurring). They are business records of the kind that have generally been accorded minimal Fourth Amendment protection. United States v. Morton Salt Co., 338 U.S. 632, 651-653 (1950); see, "Developments in the Law - Corporate Crime: Regulating Corporate Behavior Through Criminal Sanctions," 92 Harv. L. Rev. 1227, 1286-1289 (1979). In Interstate Commerce Com. v. Gould, 629 F.2d 847, 858 (3rd Cir. 1980), cert. denied, 449 U.S. 1077 (1981), the Circuit Court observed that "the modern businessman has little or no expectation of privacy in his business

records, especially those documents prepared in compliance with regulatory requirements."

Even allowing that some minimal expectation of privacy might exist, the licensee's interest in the records is not sufficiently strong to require a judicial determination that probable cause exist before government can inspect them. In United States v. Miller, 425 U.S. 435, 442 (1976), the Court held that a bank's depositors enjoy no legitimate expectation of privacy in their personal checks and bank records, since the information they contain is conveyed to the bank and exposed to its employees in the ordinary course of business. Similarly, in Couch v. United States, 409 U.S. 322, 335-336 & n.19 (1973), the Court held that the sole proprietress of a restaurant had no legitimate

expectation of privacy in her bank statements, payroll records, and reports of sales, when she turns them over to her accountant for the purpose of preparing her income tax returns, knowing that mandatory disclosure of the information in them is required in the returns. In Bellis v. United States, 417 U.S. 85, 91-91 (1974), the Court held that a lawyer had no legitimate expectation of privacy in the financial records which he shares with his partners in a law firm. In each of these cases, the individuals involved undoubtedly believed that the records were confidential and private, but this Court refused to recognize their subjective expectations as legitimate. The principles of these cases compel the conclusion that the appellants in this case could not have an expectation of privacy sufficient to trigger the Fourth

Amendment's probable cause requirement.

In fact, in the case at hand there is far less reason for judicial concern than there was in Miller, Couch, and Bellis. The radio and television service dealers can have no legitimate expectation of privacy in records that they are specifically required by law to keep and make available for inspection pursuant to the licensing law. Involved here is the "required records" exception, which has a firm place in the history of the law of searches and seizures, being traceable in the first instance to the seminal decision of Boyd v. United States, 116 U.S. 616, 623-624 (1886), and reiterated in subsequent decisions of the Court. E.g., Shapiro v. United States, 335 U.S. 1, 32-34 (1948); Wilson v. United States, 221 U.S. 361, 374-375, 380 (1911);

Hale v. Henkel, 201 U.S. 43, 77 (1906).* The doctrine was well stated in United States v. Pine Valley Poultry Corp., 187 F. Supp. 455 (S.D.N.Y. 1960), a case in which the District Court denied a motion to suppress evidence that was secured by inspectors of the Department of Agriculture from an examination of records that poultry dealers were

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*In Camara v. Municipal Court, 387 U.S. 523 (1967) and subsequent decisions, the Court dealt with administrative searches of residences and of the non-public portions of business premises. The only reference in the decisions to administrative inspections of records is contained in a single footnote to Marshall v. Barlow's, Inc., 436 U.S. 305, 324 n.22 (1978), and there the Court was responding to a claim by the Secretary of Labor of authority to examine not only the records the company was required to keep by law, but also all other records, files and papers bearing on the company's compliance with health and safety regulations. The Court answered simply: "[A]n inspection of documents of this

(footnote contined on next page)

required by law to keep, subject to inspection at reasonable times. There, Judge Weinfeld wrote:

> The power of Congress to require those engaged in a business affected with a public interest to keep records subject to inspection by an administrator in order to secure enforcement of the law is not open to constitutional objection. Thus, the books and records, so kept are not private papers or records, but assume the characteristics of public or quasi-public documents, a distinction recognized by the law. In a sense, such "required records" are in the public domain. As a result, they are nonprivileged and their custodian is not afforded the traditional protections of the fourth and fifth amendments; rather, in assuming their custody, he has accepted the incident obligation to permit inspection.

(footnote continued from previous page)

scope may [not] be effected without a warrant" (id). That statement cannot be read as implying disapproval of warrantless inspections that are carefully limited to specific documents required to be kept by law, or any reconsideration of the doctrine of "required records." See California Bankers Ass'n v. Schultz, 416 U.S. 21, 52-55, 59-72 (1974) (sustaining constitutionality of record keeping and compulsory reporting provisions of Bank Secrecy Act).

The rule excepting "required records" from the category of unreasonable searches and seizures embodies a long-held understanding that businesses can have no legitimate expectations of privacy in the records they are required by law to keep, subject to inspection. The fact that records are "required records" is decisive of any privacy claim. United States v. Snyder, 668 F.2d 686, 690 (2d Cir. 1982) (union officials have no expectation of privacy in records of union pension and welfare fund required to be kept by law); In Re Grand Jury Proceedings, 601 F.2d 162, 167-168, 170 (5th Cir. 1979) (licensed customshouse broker has no expectation of privacy in records required by regulations to be kept); Youghiogheny and Ohio Coal Co. v. Morton, 364 F. Supp. 45, 41 n. 5 (S.D. Ohio 1973) (mine operator

has no expectation of privacy in the maps, books and records required by the Mine Safety Act); Hosto v. Brickwell, 265 Ark. 147, 577 S.W. 2d 401 (1979) (licensed pharmacist has no expectation of privacy in records required by law to be kept).

Thus numerous courts have upheld in a wide variety of circumstances statutes requiring licensees to keep records and to make them available for inspection without the necessity of a judicial warrant. E.g., Donovan v. Mehlenbacher, 652 F.2d 228, 231 (1st Cir. 1981) (records required to be kept by farmer employing migrant workers); Civil Aeronautics Board v. United Airlines, Inc., 542 F.2d 394 (7th Cir. 1976) (records required to be kept by airline carrier); Securities and Exchange Com. v. Olsen, 354 F.2d 166 (2d Cir. 1965)

(records required to be kept by investment advisors); Cooper's Express, Inc. v. Interstate Commerce Com., 330 F.2d 338 (1st Cir. 1964) (records required to be kept by interstate motor carriers); Hughes v. Johnson, 305 F.2d 67 (9th Cir. 1962) (records required to be kept by a business engaged in storage of migratory game birds taken by hunters); State v. Strover, 97 N.J. 391, 378 A.2d 1175 (1984) (bookkeeping records required to be kept by attorneys pursuant to court rules); Carr v. South Dakota Department of Labor, Unemployment Insurance Division, 355 N.W. 2d 10 (S. Dak. 1984) (payroll records required to be kept by employers pursuant to unemployment insurance law); State v. Kirkland, 655 S.W. 2d 140 (Tenn. 1983) (logs of purchases required to be kept by jewelry and precious metals dealers); Liberman v.

Cervantes, 511 S.W. 2d 835 (Mo. 1974) (records required to be kept by licensed pawnbroker); State Real Estate Com. v. Roberts, 441 Pa. 159, 271 A.2d 245 (Pa. 1970) (records required to be kept by licensed real estate dealer), cert. denied, 402 U.S. 905 (1971).

In sum, whatever minimal expectations of privacy radio and television service dealers may ordinarily have in their business records, they can have none in the written estimates, work orders, and final bills which they are required by law to keep and make available for inspection. The Fourth Amendment, therefore, is not a bar to their inspection without a warrant.

III. The Statute Authorizing the Inspection of the Required Records At Issue Here Is At Least As Protective of Privacy Interests As Similar Statutes Already Approved By This Court

The decisions of this Court dealing with administrative inspections have consistently emphasized a particular concern and the necessity of corresponding safeguards. The concern is the unconstrained exercise of discretion by officers in the field. The corresponding safeguard is often the requirement of prior approval by a magistrate, but may also be found, where the privacy interests implicated by a search are minimal, in the existence of administrative standards that give reasonable direction and limits to the investigatory power. New Jersey v. T.L.O., 105 S.Ct. 733, 744 n.8 (1985); Delaware v. Prouse, 440 U.S. 648, 654-655

(1979).

The concern of the Court is apparent upon an analysis of the statutory grants at issue in Camara v. Municipal Court, 387 U.S. 523 (1967), See v. City of Seattle, 387 U.S. 541 (1967), and Marshall v. Barlow's Inc., 436 U.S. 305, the three principal cases on which appellants rely. Section 503 of the San Francisco City Housing Code, the ordinance under consideration in Camara, gave city inspectors the power to enter "any building, structure, or premises in the City to perform any duty imposed upon them by the Municipal Code." This included the duty (among others) of determining through periodic inspection whether conditions existed in "residential buildings, dwelling units and neighborhoods" that might be found to be "dangerous, substandard, unsanitary or

obsolete and deficient," San Francisco Housing Code Sec. 101; Part III, Sec. 86, San Francisco Municipal Code. In See, which involved an attempted inspection of a locked commercial warehouse, the authority was only slightly more restricted. The relevant statute provided for entry by the Fire Chief into buildings other than dwellings "as often as may be necessary for the purpose of ascertaining and causing to be corrected any conditions liable to cause fire, or any violations of the provisions of this Title, and of any other ordinance concerning fire hazards." Seattle Fire Code Sec. 8.01.050, quoted 387 U.S. at 541. These expansive grants of authority, if upheld, would have permitted an inspector to roam at will through any portion of a dwelling house in one case, or commercial property in

the other, with

> [t]he occupant having no way of knowing whether enforcement of the municipal code involved required inspection of his premises, no way of knowing the lawful limits of the inspector's power to search, and no way of knowing whether the inspector himself is acting under proper authorization. . . The practical effect of this system is to leave the occupant subject to the discretion of the official in the field. . . .

387 U.S. at 532. By giving an occupant the right to demand a warrant, the Court sought to insure that "the decision to enter and inspect will not be the product of the unreviewed discretion of the enforcement officer in the field." See v. City of Seattle, 387 U.S. at 545. See Stanford v. Texas, 379 U.S. 476, 485 (1965).

The statutory grant authorizing the administrative search at issue in Marshall was also extremely broad. Section 8(a) of the Occupational Safety

and Health Act of 1970 (OSHA), 29 USC Sec. 657(a), gave federal inspectors the power to enter any place "where work is performed by an employee of an employer" to inspect and investigate all "pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein." This grant of authority, said the Court,

> devolves almost unbridled discretion upon executive and administrative officers, particularly those in the field, as to when to search and whom to search. A warrant, by contrast, would provide assurances from a neutral officer that the inspection is reasonable under the Constitution, is authorized by statute, and is pursuant to an administrative plan containing specific neutral criteria. Also, a warrant would then and there advise the owner of the scope and objects of the search, beyond which limits the inspector is not expected to proceed. These are important functions for a warrant to perform, functions which underlie the Court's prior decisions that the Warrant Clause applies to inspections for compliance with regulatory statutes. (436 U.S. at 324-25).

By contrast, the statutory grant of authority at issue in Donovan v. Dewey, 457 U.S. 594 (1981), did not leave "the frequency and purpose of inspections to the unchecked discretion of government officials" (id. at 604). The statute authorizing warrantless inspections of underground and surface mines requires inspection of all mines, and specifically defines the frequency of inspections. The standards mine operators are required to meet are all specified and known to them. In these circumstances, the Court found it difficult to see what additional protection a warrant requirement would provide since "[t]he discretion of government officials to determine what facilities to search and what violations to search for is [already] directly curtailed by the regulatory scheme." (id. at 605). That being the case, the

Court expressed itself willing to defer to the legislative determination that warrantless inspections were necessary to enforce mine safety. See also United States v. Martinez-Fuerte, 428, U.S. 543, 559 & n.13, 565-566 (1978); South Dakota v. Opperman, 428 U.S. 364, 374 - 375 (1976).

It is significant in the present case that the regulatory scheme leaves virtually no discretion in the hands of the Department's inspectors in the field. The decisions whether, how, and whom to inspect are made centrally. Dealers are chosen for inspection randomly by computer, and the conduct of the inspections is made uniform by the use of a standard form. Most importantly, the inspections are limited by statute to examining the records required by law to be kept and to

verifying that the mandatory notices to consumers are posted conspicuously and available at each dealer's shop. The inspectors are given no authority to conduct general searches of the premises of licensed dealers, either with or without the consent of the licensees. In these circumstances, nothing is gained through individualized review of the inspector's authority by a magistrate in advance of inspection.

IV. The Established Procedures Under which the Inspection of Required Records Is Conducted Provide More Protection to these Appellants than the Traditional Warrant Procedure

A point that must be stressed is that the decisions of the Commissioner suspending and revoking the appellants' licenses and fining them each $300 are not self-executing. They require

judicial assistance to enforce: an injunction to compel compliance with the Commissioner's orders and a judgment in a civil action to recover the penalties. New York City Administrative Code Sec. 773-5.0. Even if appellants themselves had not commenced judicial proceedings, they would still have had the opportunity to raise in court any objections they had to the inspections. Cf. Friedman v. Hi-Li Manor Home for Adults, 42 N.Y.2d 408, 414, 397 N.Y.S.2d 967, 969, 366 N.E.2d 1322, 1324 (1977) (holding that recipient of office subpoena duces tecum may properly raise his objections when the official issuing the subpoena first seeks judicial sanction for non-compliance). Thus, petitioners were guaranteed the opportunity of judicial review of the reasonableness of the inspections prior to their suffering any

consequences for refusing to comply. The availability of judicial review in the instant case protects against any arbitrary actions and satifies the requirements of the Fourth Amendment.

A search pursuant to a warrant, particularly of a person's books and papers, may involve a substantial invasion of privacy. The fundamental evil at which the Fourth Amendment was directed was the sweeping exploratory search through a person's papers and belongings conducted pursuant to a general warrant. The Amendment seeks to curtail such searches by requiring warrants that describe particularly the things to be seized. Coolidge v. New Hampshire, 403 U.S. 443, 467 (1971). But no matter how particularly a paper is described, the officers executing it may still have to search and read all a

person's papers in order to find the one named in the warrant. Zurcher v. Stanford Daily, 436 U.S. 547, 580 n.7 (1978) (Stevens, J., dissenting); see, T. Taylor, Two Studies in Constitutional Interpretation, 67-68 (1969). Moreover, the warrant ordinarily issues ex parte, and the search it authorizes may be affected by the threat or use of force. The individual has little choice but to submit to the search no matter how intrusive it may be.

By way of contrast, the inspections of licensees' records attempted here involved neither an actual search nor the threat or actual use of force. Rather, each licensee was asked to furnish the inspector with the documents to be inspected, and when that request was refused, the Commissioner's only recourse was to administrative and judicial

process. See Donovan v. Lone Steer, Inc., 104 S. Ct. 769 (1984). These procedures compare favorably to the warrant procedure, and provide as much, if not more, protection to the legitimate interests of the licensees.

The development of Fourth Amendment protections against compulsory production of a person's papers and records derives substantially from United States v. Morton Salt Co., 338 U.S. 632, 651-654 (1950), in which the Court upheld the authority of the Federal Trade Commission to require companies within its jurisdiction to file detailed reports concerning their activites. The Morton Salt Co., nineteen other salt producers, and their trade association had been ordered to cease and desist from certain monopolistic practices in connection with pricing, producing and marketing salt.

Several years later, in order to satisfy itself that the producers were continuing to comply with the order, the Commission demanded from each of them a "complete statement" of the "prices, terms, and conditions of sale of salt, together with books or compilations of freight rates used in calculating . . . [the prices] . . . after January 11, 1944" (id. at 637). Two of the producers refused to comply with the demand, and the Commission filed suit, asking for injunctive relief to compel the two companies to report as directed and judgments against the produers for the statutory penalty of $100 for each day the companies were in default (id. at 635 n.1 & 637). The Court held that neither probable cause nor a prior judicial determination of the validity of the Commission's order was necessary. The Fourth Amendment is

satisfied "if the inquiry is within the authority of the agency, the demand is not too indefinite and the information is reasonably relevant," and by the availability of judicial review "[t]o protect against mistaken or arbitrary orders," after the party has resorted to procedures within the agency to modify or quash the demand. Id. at 640, 652-653, 654. See also Oklahoma Press Pub. Co. v. Walling, 327 U.S. 186, 217 (1946).

More recently, in California Bankers Assn. v. Shultz, 416 U.S. 21, 59-67 (1974), the Court held that regulations requiring banks and other financial institutions to keep certain records and to file reports concerning currency transactions exceeding $10,000, violation of which would subject those required to report to civil or criminal penalties, did not abridge any Fourth Amendment

rights. The Court observed:

> The regulations do not impose unreasonable reporting requirements on the banks. . . . [and the] information [required to be filed] is sufficiently described and limited in nature, and sufficiently related to a tenable congressional determination as to improper use of transactions of that type in interstate commerce, so as to withstand the Fourth Amendment challenge made by the bank plaintiffs. "[T]he inquiry is within the authority of the agency, the demand is not too indefinite and the information sought is reasonably relevant. 'The gist of the protection is in the requirement, expressed in terms, that the disclosure sought shall not be unreasonable.'" United States v. Morton Salt Co., supra, at 652-653; see Oklahoma Press Publishing Co. v. Walling, 327 U.S. 186, 208 (1946).

The authority to inspect records, which is at issue in the present case, is essentially an analogue of the authority conferred on administrative agencies to issue administrative subpoenas duces tecum or to compel reports to be filed. In Marchetti v. United States, 390 U.S. 39, 56 n.14 (1968), the Court noted that

there is no "meaningful difference between an obligation to maintain records for inspection, and such obligation supplemented by a requirement that those records be filed periodically with officers of the United States. We believe, as the United States itself argued in [Shapiro v. United States, 335 U.S. 1 (1948)], that '[r]egulations permit records to be retained, rather than filed, largely for the convenience of the persons regulated'." Accord, Mackey v. United States, 401 U.S. 667, 708 n. 8 (1971) (Brennan, J. concurring).

Thus, as with administrative subpoenas duces tecum and compulsory reporting requirements, no warrant is required to exercise the power to inspect documents. The Fourth Amendment is satisfied if the authority to inspect is exercised reasonably and if judicial

review is available before a person is ultimately required to submit to the inspection.

Conclusion

The appeal should be dismissed for lack of jurisdiction. Alternatively, the judgment of the New York Court of Appeals should be affirmed.

Respectfully Submitted,

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